

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the amendment of                    ) NOTICE OF AMENDMENT  
ARM 12.9.804, 12.9.804A, 12.9.805,                    )  
and 12.9.1101 pertaining to game                    )  
damage hunts    )

TO: All Concerned Persons

1. On July 16, 2015, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-445 pertaining to the public hearings on the proposed amendment of the above-stated rules at page 875 of the 2015 Montana Administrative Register, Issue Number 13.

2. The department has amended the following rule as proposed: ARM 12.9.804A.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.9.804 GAME DAMAGE HUNTS (1) Damage hunts are carried out according to the following policies and procedures:

(a) remains as proposed.

(b) if the regional supervisor determines that a damage hunt is necessary before, during, or after the general hunting season, the regional supervisor must obtain approval of the commissioner in whose district the game damage hunt is proposed prior to implementing the hunt. If the commissioner is not available, then the regional supervisor ~~may request~~ must obtain approval from the chair of the commission or, in the chair's absence, any other commissioner.

(2) The following conditions apply to game damage hunts:

(a) through (e) remain as proposed.

(f) if the department determines that it may be effective in helping achieve the objectives of the hunt, the department may request a list of names supplied by a landowner to use in addition to selecting hunters from the hunt roster or other established means of hunter selection;

(g) if the department chooses to use a list of names supplied by a landowner, no more than 25% of the total number of hunters authorized to participate in the hunt may come from the list;

(f) and (g) remain as proposed but are renumbered (h) and (i).

~~(h)~~ (j) any weapons restrictions or area closures that apply during general hunting seasons to areas included in game damage hunts will also apply to hunting conducted during game damage hunts in those same areas; ~~and~~

~~(i)~~ (k) damage hunts may include the harvest of male and female game animals; and

(l) if harvest of antlered animals is authorized, lists of names supplied by landowners shall not be an authorized means of hunter selection.

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

12.9.805 SUPPLEMENTAL GAME DAMAGE LICENSES (1) through (4) remain as proposed.

~~(5) In order to receive an elk supplemental game damage license, a hunter must return for refund to the department any unused valid A9/B12 antlerless elk license prior to the supplemental elk game damage license being issued.~~

~~(a) The price of the supplemental game damage license will be the regular license price of an A9/B12 antlerless elk license or an adjusted price set by the commission.~~

(6) and (7) remain as proposed but are renumbered (5) and (6).

AUTH: 87-2-520, MCA

IMP: 87-2-520, MCA

12.9.1101 MANAGEMENT HUNTS (1) remains as proposed.

(2) If the regional supervisor determines that a management hunt is necessary before, during, or after the general hunting season, the regional supervisor must obtain approval of the commissioner in whose district the management hunt is proposed prior to implementing the hunt. If the commissioner is not available, then the regional supervisor ~~may request~~ must obtain approval from the chair of the commission, or in the chair's absence, any other commissioner.

(3) and (4) remain as proposed.

(5) If the department determines that it may be effective in helping achieve the objectives of the hunt, the department may request a list of names supplied by a landowner to use in addition to selecting hunters from the hunt roster or other established means of hunter selection.

(6) If the department chooses to use a list of names supplied by a landowner, no more than 25% of the total number of hunters authorized to participate in the hunt may come from the list.

(7) If antlered animals are authorized for harvest, lists of names supplied by landowners shall not be an authorized means of hunter selection.

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comment 1: The department received comments expressing concerns that changing the name from management "season" to management "hunt" would

change the approval process from requiring full commission approval to requiring only regional supervisor and district commissioner approval.

Response 1: Changing the name from management "season" to management "hunt" will not affect the approval process. Section 87-1-225, MCA, makes the department responsible for administering game damage hunts. ARM 12.9.1101 was adopted in 2006 pursuant to that statute and has never made game damage hunts subject to full commission approval.

Comment 2: The department received comments regarding the proposed amendment to add "lists of names from landowners" as a method of identifying hunters eligible to participate in game damage or management hunts in addition to use of the hunt roster. Some comments supported this amendment, some opposed, some suggested adding language that restricted the number of landowner identified names, and some comments suggested that a cap or limit should be defined in ARM rather than policy.

Response 2: In response to these comments, the department has amended the proposed language to require that names submitted by landowners be no more than 25% of the total hunters selected for participation in a game damage or management hunt.

Comment 3: The department received comments expressing concerns about landowners potentially charging access fees or accepting payments from hunters participating in game damage or management hunts, particularly if harvest of antlered animals is authorized.

Response 3: The department has amended the proposed language to include a provision that states if harvest of antlered animals is authorized, lists of names supplied by landowners shall not be an authorized means of hunter selection.

Comment 4: The department received comments opposing amending the time period to sign up for the hunt roster from June 15 through July 15 to "dates specified by the department," suggesting it would be confusing, or that the process of randomization would be compromised.

Response 4: The proposed change is intended to allow for greater flexibility to adopt dates that would coincide with changing regulations and deadlines.

Comment 5: The department received comments opposing the amendment to remove the requirement for a hunter to surrender their unused elk licenses in order to receive a supplemental game damage license.

Response 5: Supplemental game damage licenses are established according to 87-2-520, MCA, and nothing in that statute requires surrender of any other license. Hunters receiving supplemental game damage licenses must still comply with all

other provisions of Montana law, including the current limit of harvesting a maximum of two elk per year.

Comment 6: The department received comments expressing concerns about the amendment to remove the requirement for the director to provide conditional approval before the regional supervisor may obtain approval from the district commissioner for implementing a management hunt.

Response 6: There is no requirement in statute for the director to provide conditional approval of a management hunt. Removing this extra step will allow for implementation of hunts in a timely manner.

Comment 7: The department received comments regarding the formatting of the proposal notice.

Response 7: These comments are outside the department's authority. The Secretary of State's office publishes the rule notice, and requires a standard format for writing administrative rules.

Comment 8: The department received comments that all of the issues and recommendations discussed in the game damage program performance audit report should be addressed through amendments to the rules.

Response 8: Many of the issues and recommendations in the audit report are more appropriately addressed through other means.

Comment 9: The department received a comment that a mandatory report documenting the effectiveness of a game damage or management hunt should be required.

Response 9: The department is reviewing ways to improve documentation of all activities related to the game damage program, including evaluation of effectiveness of different types of responses. The department does not believe an amendment to the rules is necessary to accomplish this goal.

Comment 10: The department received comments both in support of and opposition to the harvest of antlered animals.

Response 10: ARM 12.9.804(2)(i) states: "damage hunts may include the harvest of male and female game animals." No change is proposed to that rule. The species and sex of animals that may be taken are specifically determined for each individual hunt.

Comment 11: One comment stated opposition to limiting public comment during the hearing to two minutes.

Response 11: The department conducts its hearings in a fair and consistent manner. The department does not limit public participation to only the hearing. Views and statements can be expressed via written comment.

Comment 12: The department received comments suggesting that more specific information should be added to the hunt roster web site.

Response 12: This comment is outside the scope of this rulemaking. However, department staff will consider these comments as part of an overall review and evaluation of the current information displayed on the web site.

Comment 13: The department received comments in opposition to changing current eligibility requirements and comments suggesting that there should be different land owner eligibility requirements.

Response 13: Nothing in the proposed amendments changes or affects current landowner eligibility requirements.

Comment 14: The department received comments related to the shoulder season proposal.

Response 14: These comments are outside the scope of this rulemaking process. The shoulder season proposal is not set through administrative rulemaking and is a separate process approved by the commission.

Comment 15: The department received a comment suggesting that department personnel should manage the hunts or be available for hire to perform that function.

Response 15: The department is responsible for administering game damage and management hunts. However, the department has not chosen to require that staff be present during the entirety of each hunt.

Comment 16: One comment stated that FWP should pay more attention to public land habitat conditions and wildlife standards under existing National Forest Plans.

Response 16: This comment is outside the scope of this rulemaking.

Comment 17: The department received a comment in favor of allowing a hunter to sign up for more than one hunting district per species on the hunt roster.

Response 17: The department is not considering changing the hunt roster's limitation to one hunting district per hunter per species through these amendments.

Comment 18: The department received a comment that only Montana income taxpayers should be eligible to sign up for the hunt roster.

Response 18: The department is not proposing to amend current percentages of nonresident hunters allowed to participate.

/s/ Aimee Fausser  
Aimee Fausser  
Rule Reviewer

/s/ M. Jeff Hagener  
M. Jeff Hagener  
Director  
Department of Fish, Wildlife and Parks

Certified to the Secretary of State November 30, 2015.